

CITY OF ALAMEDA

Memorandum

To: Honorable Chair and
Members of the Community Improvement Commission

From: John A. Russo
Executive Director

Date: December 20, 2011

Re: Adopt a Resolution of the Community Improvement Commission of the City of Alameda Authorizing a Reduction in the Community Improvement Commission's Fiscal Year 2011-12 Allocation to the Low and Moderate Income Housing Fund and Making Certain Findings Related Thereto

BACKGROUND

On June 29, 2011, as part of adopting the State of California Fiscal Year (FY) 2011-12 budget, the Governor signed two trailer bills, ABX1 26 and ABX1 27, into law. The legislation became effective on June 29, 2011. ABX1 26 eliminates redevelopment agencies as of October 1, 2011. ABX1 27 provides an opportunity for redevelopment agencies to "opt-in" and continue to operate and function if the sponsoring jurisdiction (the City of Alameda) adopts an ordinance by October 1, 2011.

On July 19, 2011, the City Council adopted an urgency ordinance to permit the continued existence and operation of the Community Improvement Commission of the City of Alameda (CIC). The primary obligation incurred by sponsoring communities enacting an opt-in ordinance is the obligation to make annual payments ("remittances") to the County Auditor-Controller beginning in FY11-12, and in all succeeding years the agency is in existence. By opting in, the City has agreed to make the remittances on behalf of the CIC. Remittances may be made from any available funds, including CIC funds.

On August 11, 2011, the California Supreme Court issued an order in *CRA v. Matosantos* which stays parts of ABX1 26 and almost all of ABX1 27. The provisions of ABX1 26 that remain in effect after the Court's order require the CIC to preserve its assets and prevent the CIC from entering into new contracts or taking on new obligations. The still-active provisions of ABX1 26 allow and require agencies to continue to meet their existing obligations and make any payments necessary for ongoing agency administration.

On September 20, 2011, the City Council and CIC approved a Remittance Agreement. On October 15, 2011, the State Department of Finance (DOF) upheld the CIC's appeal

CC/CIC
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of its FY11-12 remittance payment, reducing the initial payment of \$5,170,697 to \$4,327,384. Notwithstanding a remittance payment that is \$843,313 less than originally forecast, it will be necessary to reduce the FY11-12 allocation to the Affordable Housing Set-Aside Fund (Set-Aside Fund) by \$1 million to make the required payment. Approval of the attached resolution is necessary to reduce the FY11-12 payment to the Set-Aside Fund, in anticipation of a Supreme Court ruling on the legislation and the potential requirement to make a remittance payment on January 15, 2012.

DISCUSSION

As discussed above, ABX1 27 requires cities to make annual remittance payments if they opt into the Voluntary Redevelopment Program. The Remittance Agreement approved by the City and the CIC obligates the CIC to make the remittance payments on the City's behalf. Funds to make the required annual payment must come from the CIC's 80% (non-housing) fund. However, ABX1 27 provides that agencies are exempt from making their full deposit into the Set-Aside Fund in FY11-12, only to the extent the agency adopts a resolution finding that there are insufficient other funds (e.g., 80% funds), and using Set-Aside Funds is necessary to make all or a portion of the FY11-12 remittance.

Pending the Supreme Court ruling, the CIC proposes to allocate \$1 million in Set-Aside Funds to pay a portion of the \$4,327,384 FY11-12 remittance. The CIC is projecting \$7.8 million in FY11-12 80% funds, net of pass-through obligations. Outstanding FY11-12 80% obligations total \$9.1 million, including nearly \$1 million in administrative expenses, including personnel, general office costs, and cost allocation charges. Obligations range from \$4.9 million in bond debt service payments, a \$2.2 million payment pursuant to the Bayport Disposition and Development Agreement (DDA), an \$800,000 payment to the Marina Village project, and a \$200,000 payment to the Bridgeside Shopping Center. Fund balance and FY11-12 tax increment will be needed to meet these obligations and to make the FY11-12 remittance payment. There are insufficient 80% funds to make the full remittance payment given the outstanding obligations; therefore, it is necessary to allocate \$1 million in Set-Aside Funds to pay a portion of the remittance.

FINANCIAL IMPACT

DOF has identified the City's FY11-12 Remittance Payment as \$4,327,384. Pursuant to the Remittance Agreement approved on September 20, 2011, CIC housing (\$1 million) and non-housing (\$3,327,384 million) funds will be remitted to the County Auditor-Controller for FY11-12, pending the outcome of the Supreme Court's ruling, as a requirement to continue to operate the CIC. The necessary budget adjustments and appropriations will be presented to the CIC for its review and approval following the Court ruling. In addition, analysis is underway to estimate future years' required remittances, and that information will be provided to the CIC.

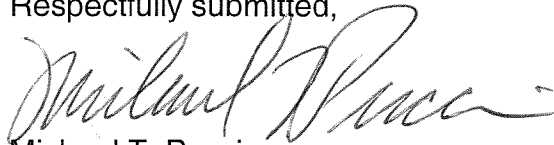
ENVIRONMENTAL REVIEW

This action does not constitute a project for CEQA purposes because it involves creation of a governmental funding mechanism and does not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment. (CEQA Guidelines Section 15378(b)(4)).

RECOMMENDATION

Adopt a Resolution of the Community Improvement Commission of the City of Alameda authorizing a reduction in the Community Improvement Commission's Fiscal Year 2011-12 allocation to the Low and Moderate Income Housing Fund and making certain findings related thereto.

Respectfully submitted,



Michael T. Pucci
Housing Authority Executive Director

By:



Debbie Potter
Housing Development and Programs Manager

Approved as to funds and account,



 Fred Marsh
Controller

MTP/DP:al

COMMUNITY IMPROVEMENT COMMISSION
RESOLUTION NO. _____

AUTHORIZING A REDUCTION IN THE COMMUNITY IMPROVEMENT
COMMISSION'S FISCAL YEAR 2011-12 ALLOCATION TO THE LOW
AND MODERATE INCOME HOUSING FUND AND MAKING CERTAIN
FINDINGS RELATED THERETO

Approved as to Form
General Counsel

WHEREAS, as part of the 2011-12 State budget bill, the California Legislature enacted, and the Governor signed: (i) ABX1 26, which prohibits agencies from taking numerous actions, effective immediately and purportedly retroactively, and additionally provides that agencies are deemed to be dissolved as of October 1, 2011; and (ii) ABX1 27, which provides that agencies do not have to cease activities and do not have to dissolve, if the community creating the redevelopment agency enacts an ordinance agreeing to comply with the alternative voluntary redevelopment program described in Section 2 of ABX1 27 adding Part 1.9 (commencing with section 34192) of Division 24 of the Health and Safety Code ("Alternative Redevelopment Program"); and

WHEREAS, the Alternative Redevelopment Program requires the City to remit specific annual payments to the Alameda County Auditor-Controller ("City Remittance"); and

WHEREAS, the City has been notified that its payment to the Alameda County Auditor-Controller for the 2011-12 fiscal year will be \$4,327,384, which payment is required to be made in two installments on January 15, 2012, and May 15, 2012; and

WHEREAS, the City Council of the City of Alameda ("City") adopted Ordinance No. 3034 ("Ordinance") on July 19, 2011, determining that the City would comply with the Alternative Redevelopment Program, subject to certain terms and conditions, and has notified the State Department of Finance, the State Controller and the Alameda County Auditor-Controller of such determination; and

WHEREAS, pursuant to Section 34194.2 of the Health and Safety Code, the City and the Community Improvement Commission of the City of Alameda ("CIC") have entered into a Remittance Agreement ("Remittance Agreement"), which provides, among other things, for CIC's annual transfer of tax increment funds to the City in an amount not to exceed the annual City Remittance required to be paid under the Alternative Redevelopment Program; and

WHEREAS, Health and Safety Code Section 34194.3 provides that if an agency finds there are insufficient funds to meet its debt and other obligations, current priority program needs, or its obligations under Section 34194.2, it shall

be exempt from making the full allocation required to be made to the agency's Low and Moderate Income Housing Fund for the 2011-12 fiscal year only; and

WHEREAS, CIC desires to reduce the fiscal year 2011-12 allocation to the CIC's Low and Moderate Income Housing Fund so that CIC can pay its debt service and existing obligations, and current priority program needs, including administrative costs of such programs, as well as make the payments authorized by Health and Safety Code Section 34194.2; and

WHEREAS, although the City intends to make the City Remittance payments as set forth in the Ordinance and the Remittance Agreement, the Ordinance and Remittance Agreement each provides that it shall be deemed null and void if ABX1 26 and ABX1 27 are determined by a court of competent jurisdiction to be unconstitutional, illegal, invalid or otherwise unenforceable or inapplicable, for any reason.

NOW, THEREFORE, THE COMMUNITY IMPROVEMENT COMMISSION OF THE CITY OF ALAMEDA DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. The CIC hereby finds that it does not have sufficient funds to meet its fiscal year 2011-12 obligations under the Remittance Agreement as authorized by Health and Safety Code Section 34194.2. The other monies available to and to be received by the Agency in fiscal year 2011-12 are required for the payment of CIC debt service and existing obligations, and current priority program needs, including administrative costs of such programs, and are insufficient to make the payments authorized by Health and Safety Code Section 34194.2. This finding is supported by the information and documents provided by CIC staff to the CIC Board of Commissioners at the meeting approving this resolution.

Section 2. The CIC hereby authorizes a reduction of the fiscal year 2011-12 allocation to the Agency's Low and Moderate Income Housing Fund required to be made pursuant to Health and Safety Code Section 33334.2 in the amount of \$1,000,000 for the sole purpose of making its fiscal year 2011-12 payment obligation under the Remittance Agreement.

Section 3. If ABX1 26 and ABX1 27 are determined by a court of competent jurisdiction to be unconstitutional, illegal, invalid or otherwise unenforceable or inapplicable, for any reason and, therefore, the Remittance Agreement is deemed null and void, this resolution shall also be deemed null and void, and, if CIC has already transferred the annual amount of tax increment to City for fiscal year 2011-12 and City has paid the annual City Remittance, CIC shall pursue with City recovery of those funds for purposes of refunding the CIC such amounts, including refunding the CIC's Low and Moderate Income Housing Fund the amount by which said fund was reduced to make the City Remittance payments.

Section 4. The CIC Executive Director is hereby authorized to take such actions as are necessary and appropriate to carry out this resolution.

* * * * *

I, the undersigned, hereby certify that the foregoing Resolution was duly and regularly adopted and passed by the Community Improvement Commission of the City of Alameda in a Special Community Improvement Commission meeting assembled on the 20th day of December, 2011, by the following vote to wit:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

IN WITNESS, WHEREOF, I have hereunto set my hand and affixed the official seal of said Commission this 21st day of December, 2011.

Lara Weisiger, Secretary
Community Improvement Commission

Marie Gilmore, Chair
Community Improvement Commission